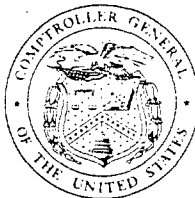


Feldman
PL-11

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

8991

FILE: B-193087

DATE: January 30, 1979

MATTER OF: Delphi Industries, Inc.

DIGEST:

1. [Protest concerning sole source nature of a procurement] filed more than two months after notice of intent to make contract award was published in the Commerce Business Daily is untimely under GAO Bid Protest Procedures 4 C.F.R. § 20.2(b)(2) (1978). Even if initial protest had been filed with procuring agency, protester delayed too long in pursuing matter with GAO more than two months after publication.
2. Where protester has actual notice of award of contract after timely receipt of Commerce Business Daily in ordinary course of business within a reasonable time after publication and mailing, timeliness of protest may be measured from date publication is received, allowing a few days for mailing and receipt of the CBD. Prior decisions are clarified to allow for reasonable time for protester to receive publication in ordinary course of business.

DLG 00120

Delphi Industries, Inc., (Delphi) protests the award of a letter contract F08635-78-C-0027 for missile containers on a sole-source basis to Metric Systems Corporation (Metric). Delphi contends that the Air Force should have solicited competition for this procurement because Delphi is a current manufacturer of missile containers.

DLG 00121

AGC 00035

The Air Force's intent to make a sole source award to Metric was publicized in the July 24, 1978, issue of the Commerce Business Daily (CBD). Specifically this notice identified the containers and quantity involved

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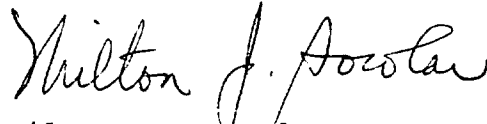
and provided that "letter contract is being issued sole source to Metric Systems Corp. * * *." In our opinion, this publication constituted notice to Delphi of the basis for protest. Delta Scientific Corporation, B-184401, August 3, 1976, 76-2 CPD 113. Subsequently, the September 18 issue of the CBD announced that the contract had been awarded to Metric on August 11.

The Air Force argues in its report that the protest to this Office is untimely under our bid protest procedures because on the basis of either synopsis date Delphi exceeded the 10 days in which to file the protest. 4 C.F.R. § 20.2(b)(2) (1978). Delphi's only response to the Air Force's position concerns the second synopsis. The protester argues that it received the September 18 issue of the CBD on September 21 and its protest was filed within 10 days after receipt of the publication. However, as indicated above we think the basis for protest should have been apparent to Delphi from the first synopsis in July.

Delphi has stated in a letter to its Senator, which was forwarded to this Office by the Senator, that after the July synopsis it called the procuring activity and "inquired what was going on" and "protested that we wanted some of this action * * *." However, Delphi has not argued here that a timely protest was filed with the Air Force on the basis of the July synopsis. We therefore must conclude from the record before us that Delphi's protest to this Office in October, more than two months after the July synopsis, is untimely. Even if Delphi were to argue that a timely initial protest was lodged with the Air Force on the basis of the July synopsis, we think Delphi delayed too long in pursuing the matter with this Office more than two months after it "protested" to the Air Force, since that agency's inaction itself would have constituted adverse agency action on the protest. 4 C.F.R. 20.0(b); 52 Comp. Gen. 792 (1973); Illitron, B-192309, August 7, 1978, 78-2 CPD 100.

The protest, therefore, is dismissed as untimely filed.

This protest suggests the need for clarification of our prior decisions following the rule established in Del Norte Technology, Inc., B-182318, January 27, 1975, 75-1 CPD 53. We held in that decision that publication of award information of a sole source procurement in the CBD is constructive notice thereof to all concerned. That case involved a situation where the protester waited more than 30 days after publication to protest. However, we did not intend to deny potential protesters a reasonable period necessary to receive the publication, since the CBD generally is sent by mail. Where, as here, the protester receives the publication in the ordinary course of business a few days after the date of publication, the timeliness of any protest will be measured from the date the publication is received.



Milton J. Secolar
General Counsel